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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOHN MARSHALL GIESECKE, JR.
29365 Mullholland Highway
Malibu Lake, CA 91301

Certified Public Accountant License
No. CPA 58762

Respondent.

Case No. A-2003-139

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 12, 2003, Complainant Carol Sigmann, in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, filed Accusation No. A-2003-139 against Respondent John Marshall Giesecke, Jr. (Respondent) before the California Board of Accountancy.

2. On or about May 17, 1991, the California Board of Accountancy (Board) issued Certified Public Accountant License number CPA 58762 to Respondent.

3. On or about November 18, 2003, Eumelia Y. Guzman, an employee of the Office of the Attorney General, served by certified and U.S. Mail, a copy of the Accusation No. A-2003-139, Request for Discovery and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 29365 Mullholland

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1 Highway, Malibu Lake, CA, 91301. A copy of the Accusation, the related documents, and
2 Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about December 1, 2003, the aforementioned documents were
6 returned by the U.S. Postal Service marked "Return to Sender no Forward Order on File". A
7 copy of the postal returned documents are attached hereto as exhibit B, and are incorporated
8 herein by reference.

9 6. Government Code section 11506 states, in pertinent part:

10 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
12 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
13 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

14 7. Respondent failed to file a Notice of Defense within 15 days after service
15 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
16 Accusation No. A-2003-139.

17 8. California Government Code section 11520 states, in pertinent part:

18 "(a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions or
20 upon other evidence and affidavits may be used as evidence without any notice to
21 respondent."

22 9. Pursuant to its authority under Government Code section 11520, the Board
23 finds Respondent is in default. The Board will take action without further hearing and, based on
24 Respondent's express admissions by way of default and the evidence before it, contained in
25 exhibits A and B finds that the allegations in Accusation No. A-2003-139 are true.

26 10. The total costs for investigation and enforcement are \$5468.74 as of
27 December 1, 2003.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent John Marshall
3 Giesecke, Jr. has subjected his Certified Public Account License No.CPA 58702 to discipline.

4 2. A copy of the Accusation and the related documents and Declaration of
5 Service are attached.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The California Board of Accountancy is authorized to revoke Respondent's
8 Certified Public Accountant License based upon the following violations alleged in the
9 Accusation:

10 a. Business and Professions Code Sections 490 and 5100 (a); conviction of
11 a substantially related crime.

12 b. Business and Professions Code Section 5063; unprofessional conduct.

13 ORDER

14 IT IS SO ORDERED that Certified Public Accountant License No. CPA 58762
15 heretofore issued to Respondent John Marshall Giesecke, Jr. is revoked.

16 Pursuant to Government Code section 11520, subdivision (c), Respondent may
17 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
18 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
19 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
20 statute.

21 This Decision shall become effective on April 1, 2004.

22 It is so ORDERED March 2, 2004

23 
24 FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
25 DEPARTMENT OF CONSUMER AFFAIRS

26 Attachments:

27 Exhibit A: Accusation No.A-2003-139, Related Documents, and Declaration of Service
28 Exhibit B: Postal Return Documents

DOJ docket number:03541110-LA2003500226

Exhibit A
Accusation No. A-2003-139,
Related Documents and Declaration of Service

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of the State of California
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CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. A-2003-139

11 JOHN MARSHALL GIESECKE, JR.
12 29365 Mullholland Highway
13 Malibu Lake, CA 91301

A C C U S A T I O N

14 Certified Public Accountant License
No. CPA 58762

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California Board of Accountancy, Department of
21 Consumer Affairs.

22 2. On or about May 17, 1991, the California Board of Accountancy issued
23 Certified Public Accountant License No. CPA 58762 to John Marshall Giesecke, Jr.
24 (Respondent). The Certified Public Accountant License was in full force and effect at all times
25 relevant to the charges brought herein and expired on June 30, 2003 and was not renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5100 states:

"After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

"(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

....

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

....

"(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

....

"(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind

"(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information."

5. Section 5109 states:

"The expiration, cancellation, forfeiture, or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license

1 by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or
2 action or disciplinary proceeding against the licensee, or to render a decision suspending or
3 revoking the license.

4 6. Section 5106 states:

5 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is
6 deemed to be a conviction within the meaning of this article. The record of the conviction shall
7 be conclusive evidence thereof. The board may order the certificate or permit suspended or
8 revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or
9 the judgment of conviction has been affirmed on appeal or when an order granting probation is
10 made, suspending the imposition of sentence, irrespective of a subsequent order under the
11 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of
12 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the
13 accusation, information or indictment."

14 7. Section 490 states:

15 "A board may suspend or revoke a license on the ground that the licensee has been
16 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the license was issued. A conviction within the meaning
18 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
19 contendere. Any action which a board is permitted to take following the establishment of a
20 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
21 been affirmed on appeal, or when an order granting probation is made suspending the imposition
22 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
23 Penal Code."

24 8. Section 5063 states:

25 "A licensee shall report to the board in writing of the occurrence of any of
26 the following events occurring on or after January 1, 1997, within 30 days of the date the licensee
27 has knowledge of these events:

28 "(1) The conviction of the licensee of any of the following:

1 "(A) A felony.

2 "(B) Any crime related to the qualifications, functions, or duties of a public
3 accountant or certified public accountant, or to acts or activities in the course and scope of the
4 practice of public accountancy.

5 "(C) Any crime involving theft, embezzlement, misappropriation of funds or
6 property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of
7 false, fraudulent, or materially misleading financial statements, reports, or information.

8 "As used in this section, a conviction includes the initial plea, verdict, or finding
9 of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that
10 conviction may not be final or sentence actually imposed until appeals are exhausted."

11 9. Section 5107, subdivision (a), states, in pertinent part:

12 "The executive officer of the board may request the administrative law judge, as
13 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
14 certificate found guilty of unprofessional conduct in violation of subdivisions (b), (c), (i) [now
15 subdivision (j)] or (j) [now subdivision (k)] of Section 5100, or involving a felony conviction in
16 violation of subdivision (a) of Section 5100, or involving fiscal dishonesty in violation of
17 subdivision (h) of Section 5100 [now subdivision (i) of Section 5100], to pay to the board all
18 reasonable costs of investigation and prosecution of the case, including, but not limited to,
19 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction of Crimes)

22 10. Respondent is subject to disciplinary action under section 5100(a) and
23 490, for violating Title 18, United States Code, Sections 371 and 1343, in that Respondent
24 entered a plea of guilty to crimes substantially related to the qualifications, functions, or duties of
25 a Certified Public Accountant, as set forth below:

26 a. On September 25, 2002, Respondent was convicted on his plea of guilty
27 for violating: 1) Title 15, United States Code Sections 78j(b) and 78ff, and Title 17, Code of
28 Federal Regulations, Section 240.10b-5 (securities fraud), a felony; 2) Title 15, United States

1 Code, Sections 78m(a) and 78ff, and Title 17 Code of Federal Regulations, Sections 240.12b-20
2 and 240.13a-13 (making false statements in a filing with the Securities and Exchange
3 Commission), a felony; 3) Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and
4 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1 (knowingly falsifying
5 Homestore's books, records, and accounts), a felony; 4) Title 15, United States Code Sections
6 78m(b)(2)(B)(ii), 78m(b)(5), and 78ff (knowingly violating Generally Accepted Accounting
7 Principles and circumventing and failing to implement a system of internal accounting
8 procedures and controls), a felony; and 5) Title 15, United States Code Section 78ff, and Title 17,
9 Code of Federal Regulations, Section 240.13b2-2 (making and causing to be made materially
10 false and misleading statements to Homestore's auditors), a felony, in the United States District
11 Court, Central District, State of California, Case No. CR 02-01028, entitled *The United States of*
12 *America v. John Giesecke*.

13 b. The circumstances surrounding the conviction are that in or about March
14 2001, in his position as Chief Operating Officer of Homestore.com, Inc., to in or about December
15 2001, Respondent agreed with other high ranking corporate officers at Homestore.com, Inc., to
16 commit offenses against the United States, in that Respondent became a member of the
17 conspiracy, knowing of at least one of its objects and intending to help accomplish it.

18 c. Further, Respondent knowingly and willfully participated in a scheme or
19 plan for obtaining money or property by making false promises or statements, while knowing that
20 the promises or statements made were false, that the promises or statements were material and
21 would reasonably influence a person to part with money or property, acted with intent to defraud,
22 and used or caused to be used, the wires to carry out or attempt to carry out an essential part of
23 scheme.

24 SECOND CAUSE FOR DISCIPLINE

25 (Failure to Notify the Board)

26 11. Respondent is subject to disciplinary action under section 5063, for
27 unprofessional conduct, in that Respondent failed to notify the Board in writing within 30 days of
28 his conviction, as more fully set forth above in paragraphs 10.a. and 10.b.

1 THIRD CAUSE FOR DISCIPLINE

2 (Dishonest and Fraudulent Acts)

3 12. Respondent is subject to disciplinary action under section 5100,
4 subdivisions (c), (i), and (j), on the grounds of unprofessional conduct, in that in or about March
5 2001 to in or about December 2001 Respondent committed dishonest and fraudulent acts, as
6 more fully set forth above in paragraphs 10.a. and 10.b.

7 PRAAYER

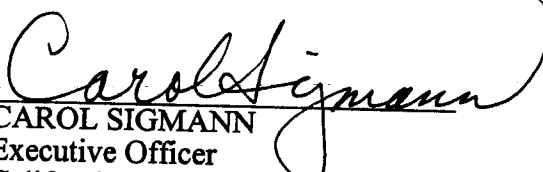
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

10 1. Revoking or suspending Certified Public Accountant License No. CPA
11 58762, issued to John Marshall Giesecke, Jr.;

12 2. Ordering John Marshall Giesecke, Jr. to pay the California Board of
13 Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to
14 Business and Professions Code section 5107;

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: November 12, 2003

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19 
20 CAROL SIGMANN
21 Executive Officer
22 California Board of Accountancy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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